National Labor Relations Board



Weekly Summary of NLRB Cases

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Barstow Community Hospital-Operated by Community Health Systems, Inc. (31-CA-26057; 352 NLRB No. 125) Barstow, CA Aug. 18, 2008. This case involves the Board's review of the administrative law judge's supplemental decision following the Board's remand for further consideration in light of its decisions in Oakwood Healthcare, Inc., 348 NLRB 686 (2006), Croft Metals, Inc., 348 NLRB 717 (2006) and Golden Crest Healthcare Center, 348 NLRB 727 (2006). The Board found that the Respondent did not establish that registered nurse Lois Sanders was a statutory supervisor when acting as Relief Clinical Coordinator because the record evidence did not show that Relief Clinical Coordinators responsibly direct or that they exercise independent judgment in assigning work. In light of these findings, the Board found it unnecessary to pass on the judge's further finding that Sanders' Relief Clinical Coordinator assignments were not a sufficiently "regular and substantial" portion of her work time for her to be considered a supervisor. [HTML] [PDF]

Accordingly, the Board affirmed the judge's findings that the Respondent violated Section 8(a)(3) of the Act by discharging Sanders for engaging in protected, concerted activity while acting as a Relief Clinical Coordinator and violated Section 8(a)(1) by interrogating her during its pre-discharge investigation of the matter. The Board also affirmed the judge's finding that, although unalleged in the complaint, the pre-discharge suspension of Sanders violated Section 8(a)(3) because the issue was fully litigated and closely connected to the complaint allegations. However, because the interrogation violation was affirmed, the Board found it unnecessary to pass on the judge's finding that the Respondent's pre-discharge investigation violated Section 8(a)(1) since it would not materially affect the remedy.

The Board found no merit in the Respondent's exceptions to two of the judge's rulings. First, the Board found it unnecessary to address the Respondent's exception to the judge's ruling precluding it from introducing evidence concerning the conduct of the unfair labor practice investigation because the exception did not meet the specificity requirements of Section 102.46 of the Board's Rules and Regulations. Second, the Board affirmed the judge's denial, following the Board's remand, of the Respondent's Motion to Reopen the Record to offer evidence that Sanders was a supervisor based solely on her regular duties as a registered nurse because the Respondent failed previously to assert this argument.

(Chairman Schaumber and Member Liebman participated.)

Adm. Law Judge Lana H. Parke issued her supplemental decision Feb. 23, 2007.

John T. Jones Construction Co., Inc. (17-CA-22607, et al.; 352 NLRB No. 126) Springfield, MO Aug. 19, 2008. The Board adopted the administrative law judge's finding that the General Counsel's calculated backpay formula was appropriate. On Nov. 29, 2007, the Board, sua sponte, issued an Order vacating its supplemental decision and order (349 NLRB No. 119 (2007)) and announced that it would reconsider the issues in this case that may be affected by its decision in Oil Capitol Sheet Metal, 349 NLRB No. 118 (2007). Upon reconsideration in light of Oil Capitol, the Board found that the record established that the discriminatees, as salts, would

have worked the entire backpay periods alleged, because the periods were limited to one project; they ended before that project was completed; and they ended prior to the representational election. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Stage Employees IATSE Local 720 (Production Support Services, Inc.) (28-CB-6555; 352 NLRB No. 128) Las Vegas, NV Aug. 22, 2008. The Board affirmed the administrative law judge's finding that the Respondent Union, in operating an exclusive hiring hall and referral system, did not violate Section 8(b)(1)(A) or (2) of the Act by maintaining rules providing that failure to pay a Union fine will result in an employee's suspension from the referral system until the fine is paid. [HTML] [PDF]

The Board found it unnecessary to pass on the judge's analysis of the work rules, as maintained, because the Charging Party's argument concerning the work rules exceeded the scope of the General Counsel's theory of the case as alleged in the complaint and proffered at the hearing.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Michael Young, an individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at Las Vegas, Aug. 14-15, 2007. Adm. Law Judge John J. McCarrick issued his decision Dec. 26, 2007.

Woodbury Partners, LLC d/b/a The Inn at Fox Hollow (29-CA-28122, et al.; 352 NLRB No. 127) Woodbury, NY Aug. 22, 2008. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by photographing employees while they were engaged in lawful picketing. The Board also affirmed the judge's findings that the Respondent did not violate Section 8(a)(1) by threatening job loss, hotel closure, or the futility of collective bargaining if the employees selected the Union. The Board remanded to the judge the issue of whether the Respondent violated Section 8(a)(1) and (3) by discharging a supervisor, in light of the judge's failure to address that issue in his decision. Reversing the judge, the Board found that the Respondent violated Section 8(a)(1) by discharging an employee. The Board noted that no exceptions were filed to the judge's finding that the General Counsel met his initial burden of establishing that protected conduct was a motivating factor in the discharge. Contrary to the judge, the Board found that the Respondent failed to meet its rebuttal burden of establishing that it would have discharged the employee even in the absence of her protected conduct. [HTML] [PDF]

The Board modified the judge's recommended Order to conform to its findings. The Board also substituted a narrow cease-and-desist order for the broad order recommended by the judge, finding that a broad order is not warranted under the test set forth in *Hickmott Foods*, 242 NLRB

1357 (1979). The Board further modified the recommended Order to require the Respondent to post notices in both English and Spanish, in light of record evidence indicating that many of the Respondent's employees are primarily Spanish speaking and have limited English proficiency. The Board denied the General Counsel's request for compound interest on backpay.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by individuals; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Brooklyn, Sept. 25-26, 2007. Adm. Law Judge Howard Edelman issued his decision Dec. 5, 2007.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Bryant Health Center, Inc. (Teamsters Local 92) Ironton, OH Aug. 18, 2008. 9-CA-43747, 44012; JD-42-08, Judge John T. Clark.

Sheet Metal Workers Local 27 (E.P. Donnelly, Inc.) Egg Harbor, NJ Aug. 18, 2008. 4-CD-1184; JD(NY)-31-08, Judge Joel P. Biblowitz.

Long Island Head Start Child Development Services, Inc. (Community and Social Energy Employees Union, District Council 1707, AFSCME Local 95) Patchogue, NY Aug. 20, 2008. 29-CA-28712; JD(NY)-32-08, Judge Raymond P. Green.

Bally's Park Place, Inc. d/b/a Bally's Atlantic City (Auto Workers) Atlantic City, NJ Aug. 21, 2008; JD-43-08, Judge Richard A. Scully.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND ORDER REMANDING [proceeding to Regional Director for further appropriate action]

RWJ Corp., Sebring, OH, 8-RC-16909, Aug. 20, 2008

Miscellaneous Board Decisions and Orders

CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

Woodford County Emergency Telephone System Board, Eureka, IL, 33-WH-5, Aug. 18, 2008
